

**OPERATING AGREEMENT**

**BETWEEN**

**TRI GENERAL IMPROVEMENT DISTRICT,**  
*a political subdivision of the State of Nevada*

**and**

**TRI WATER AND SEWER COMPANY,**  
*a Delaware corporation*

## **TABLE OF CONTENTS**

<b>1.</b>	<b>GENERAL</b>	.....	-1-
1.1	Center	.....	-1-
1.2	Company	.....	-1-
1.3	TRIGID	.....	-1-
1.4	Purpose Of Agreement/Interpretation	.....	-1-
<b>2.</b>	<b>OPERATION</b>	.....	-2-
2.1	Company Performance	.....	-2-
2.2	Company Consideration	.....	-2-
<b>3.</b>	<b>TERM AND TERMINATION</b>	.....	-2-
3.1	Term	.....	-2-
3.2	Termination	.....	-2-
<b>4.</b>	<b>SUBSIDY OF OPERATING COSTS</b>	.....	-3-
4.1	Company Subsidy	.....	-3-
<b>5.</b>	<b>MISCELLANEOUS PROVISIONS</b>	.....	-3-
5.1	Time Is Of The Essence	.....	-3-
5.2	Notices	.....	-3-
5.3	Change Of Address For Notice	.....	-3-
5.4	Entire Agreement	.....	-3-
5.5	Choice of Law	.....	-3-
5.6	Written Amendments	.....	-4-
5.7	Successors	.....	-4-
5.8	Attorney's Fees	.....	-4-
5.9	Future Cooperation	.....	-4-
5.10	Use Of Gender	.....	-4-
5.11	Calculation Of Time	.....	-4-
5.12	Interpretation	.....	-4-
5.13	Authority	.....	-4-
5.14	Headings	.....	-4-
5.15	Not A Partnership	.....	-4-
5.16	Third Party Beneficiary Rights	.....	-5-
5.17	Recordation	.....	-5-

## **EXHIBITS**

<b>Center Description</b>	.....	"A"
<b>Water Rights Description</b>	.....	"B"

## **OPERATING AGREEMENT**

THIS OPERATING AGREEMENT ("Agreement") is made as of the 7<sup>th</sup> day of MARCH, 2001, by and between TRI GENERAL IMPROVEMENT DISTRICT, a political subdivision of the State of Nevada, ("Developer"); and TRI WATER AND SEWER COMPANY, a Delaware corporation, ("Company"). For valuable consideration the parties agree to the provisions stated herein.

### **1. GENERAL.**

1.1 Center. Tahoe-Reno Industrial Center, LLC, a Nevada limited liability company, ("Developer") is the master developer of certain real property located in Storey County ("County"), Nevada known as the Tahoe-Reno Industrial Center ("Center").

1.2 Company. Company is a duly formed and existing Delaware corporation, the purpose of which is to own and operate community water and sewer systems ("Facilities") providing service to developed properties within the Center. The service area of the Company is the Center.

1.3 TRIGID. TRIGID is a general improvement district, duly formed and existing under the laws of Nevada, particularly NRS Chapter 318, to provide water and sewer service to the Center as a successor entity to Company. TRIGID's Service Plan For Water And Sewer Service has been approved by the Storey County Commission on August 8, 2000 and is incorporated herein by reference.

1.4 Purpose Of Agreement/Interpretation. The Service Plan provides for Company to operate and maintain the water and sewer systems on behalf of TRIGID (the "Operation"). This Agreement provides for said Operation and applies to water and sewer service only. It is the intent of the parties that Company shall perform all duties and functions necessary to provide all aspects of the Operation, and have all rights relating thereto, to the furthest extent allowed by law; and the

provisions of this Agreement shall be liberally construed to effectuate this purpose. Any right or obligation not required by law to be performed by the TRIGID Board of Trustees (the "Board") as a nondelegatable function is hereby delegated to Company. All rights and obligations limited by law to the Board as nondelegatable are reserved to the Board, notwithstanding provisions to the contrary herein.

**2. OPERATION.**

2.1 Company Performance. Company shall perform the Operation, including without limitation all services described in Article V, Section 6 of the Service Plan. Company shall administer the receipt of income and the payment of expenses. TRIGID shall own, lease or otherwise have possession and control, subject to Operation by Company, of all Facilities, water rights, and water and sewer Facilities easements. To the furthest extent allowed by law, Company shall not be required to comply with the provisions of NRS Chapters 332, 338 and 339. The Board shall approve, promulgate and set all rules, rates and regulations (the "Rules"), which Company shall then administer on behalf of TRIGID. Any amendment to the Service Plan shall automatically amend the rights and obligations of Company herein to perform the Operation.

2.2 Company Consideration. In consideration for Company's performance of the Operation, Company shall be paid all income received by TRIGID from fees, charges and rates established by the Rules, except for the connection fees paid by customers, which shall be deposited in a reserve account (the "Reserve Account") and used as provided in Article II of the Service Plan.

**3. TERM AND TERMINATION.**

3.1 Term. This Agreement shall have a term of fifty (50) years.

3.2 Termination. This Agreement may be terminated by Company, in Company's sole discretion, by written notice delivered to TRIGID 180 days prior to its effective date. In the event

Company delivers said 180-day notice to terminate, Company shall cooperate with TRIGID to transfer all functions of the Operation to a successor operating company, in whole or in part, or to have TRIGID assume performance of the Operation, at the end of the 180-day period, as directed by the Board, in the Board's sole discretion.

**4. SUBSIDY OF OPERATING COSTS.**

4.1 Company Subsidy. To the extent that TRIGID has insufficient revenues to pay its debts when due, or is otherwise insolvent, Company shall be required to provide to TRIGID any and all cash subsidies necessary for TRIGID to pay its bills when due without recourse to TRIGID for reimbursement; provided that TRIGID maintains its rates, charges and fees at the levels provided in the Exhibits "B-1" and "B-2" of the Service Plan. If TRIGID's rates, charges and fees are set by the Board in the future below the levels specified in said Exhibits "B-1" and "B-2", then Company's obligations provided in this Subsection shall be waived by TRIGID.

**5. MISCELLANEOUS PROVISIONS.**

5.1 Time Is Of The Essence. Time is of the essence of this Agreement.

5.2 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by electronic facsimile and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, on the date of posting by the United States Post Office; or (iii) if given by electronic facsimile, when received by the other party.

5.3 Change Of Address For Notice. Notice of change of address shall be given by written notice in the manner described in the preceding this subsection.

5.4 Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior agreements, arrangements or understandings regarding the same subject matter as this Agreement, which are null and void.

5.5 Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada.

5.6 **Written Amendments.** This Agreement may not be modified, amended, altered or changed in any respect whatsoever except by further agreement in writing, duly executed by both parties. No oral statements or representations subsequent to the execution hereof by either party are binding on the other party, and neither party shall have the right to rely on such oral statements or representations.

5.7 **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, subcontractors, personal representatives, and assigns.

5.8 **Attorney's Fees.** The prevailing party in any dispute concerning this Agreement shall be entitled to reasonable attorney's fees and costs.

5.9 **Future Cooperation.** Each party shall, at the request of another, at any time execute and delivery to the requesting party all such further instruments as may be reasonably necessary or appropriate in order to effectuate the purpose and intent of this Agreement.

5.10 **Use Of Gender.** As used in this Agreement, the masculine, feminine, or neuter gender, or the singular or plural number, shall each be considered to include the others whenever the context so indicates.

5.11 **Calculation Of Time.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays, and state or national holidays, unless the period of time specifies business days, provided that if the date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, state or national holiday.

5.12 **Interpretation.** The parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently. The parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist, or against the draftsmen.

5.13 **Authority.** Any corporation or partnership signing this Agreement, and each agent, officer, director, or employee signing on behalf of such a corporation or partnership, represents and warrants that said Agreement is duly authorized by and binding upon said corporation or partnership.

5.14 **Headings.** Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

5.15 **Not A Partnership.** The provisions of Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, partnership, or any other similar relationship between the parties.

5.16 **Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

5.17 **Recordation.** This Agreement shall not be recorded.

DATED this 7 day of MARCH, 2001.

**TRIGID:**

**TRI GENERAL IMPROVEMENT  
DISTRICT, a political subdivision of the  
State of Nevada, by and through its  
Board of Trustees**

By: 

JOHN EASTES,  
President and Chairman of the Board

**COMPANY:**

**TRI WATER AND SEWER COMPANY,  
a Delaware corporation**

By: 

VINCENT J. GRIFFITH, President

**ATTEST:**



VINCENT J. GRIFFITH, Secretary